

In The United States District Court
For The Middle District Of Pennsylvania

United States Of America	:	Criminal No. 1:Cr-01-195-5
Plaintiff/Respondent		J. Caldwell
v.		Motion to grant evidentiary
		hearing as uncontested as
Anthony Braxton		Government fails to respond
Defendant/Petitioner	:	in time.

FILED
HARRISBURG

NOV 02 2006

MATTIE L. GIAUDREA, CLERK
Deputy Clerk

In accordance with 28 USC 1746, Comes now The Petitioner to move this court to rule that Petitioner's motion for 28U.S.C. 2255, evidentiary hearing be granted and is uncontested by the Government/plaintiff.

1. On August 8, 2006, Petitioner filed with this court a motion to grant petitioner a hearing to gather evidence regarding Petitioner's motion to vacate, set aside or correct sentence by a person in Federal custody, (See "exhibit"1).

2. On August 21, 2006, The Honorable William W. Caldwell, USDJ, ordered the Government/Plaintiff to answer said motion within twenty days, (See "Exhibit 2").

3. On September 7, 2006, The Honorable William W. Caldwell, USDJ, upon motion by the Government, ordered that the response of the Government be extended to September 29, 2006 (See "Exhibit 3").

4. As of October 16, 2006, the government has neither responded, as ordered to do so by this court, nor has requested further extension of time to respond, (See attached "Docket Sheet"--"Exhibit 4").

WHEREFORE, in accordance with the 2006 edition of the USCS Court Rules For The United states Court Of Appeals Third Circuit, Law 27.3

(cont'd)

"Uncontested Motions" (See Exhibit 5"), Petitioner respectfully moves this court to grant Petitioner's request for a hearing to gather evidence regarding petitioner's instant motion and the motion currently before this court and uncontested (unanswered) by the Government.

Petitioner hereby certifies under penalty of perjury that the foregoing is true and correct.

Respectfully Submitted

Dated: October 24, 2006



Anthony Braxton, Pro Se
Inmate# 10848-067
Federal Prison Camp
P.O. Box 1000/Camp
Fort Dix, New Jersey 08640

Case 1:01-cr-00195-WWC Document 385 UNITED STATES DISTRICT COURT

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District Middle District of Pennsylvania

Prisoner No. 10848-067 Case No.

Name of Movant

Anthony Braxton

Place of Confinement

F.C.I. Fort Dix New Jersey

UNITED STATES OF AMERICA

V.

Anthony Braxton

(name under which convicted)

MOTION

1. Name and location of court which entered the judgment of conviction under attack Middle District of Pennsylvania/Harrisburg, 228 Walnut Street Harrisburg, P.A.

2. Date of judgment of conviction June 26, 2002

3. Length of sentence (10) Ten Years

4. Nature of offense involved (all counts) (2) Counts of Interstate Trafficking

5. What was your plea? (Check one)

(a) Not guilty

(b) Guilty

(c) Nolo contendere

If you entered a guilty plea to one count or indictment, and not a guilty plea to another count or indictment, give details:

6. If you pleaded not guilty, what kind of trial did you have? (Check one)

(a) Jury

(b) Judge only

7. Did you testify at the trial? Yes No XXX

8. Did you appeal from the judgment of conviction? Yes No XXX

9. If you did appeal, answer the following:

(a) Name of court _____

(b) Result _____

(c) Date of result _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes No XX

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No XX

(5) Result _____

(6) Date of result _____

(b) As to any second petition, application or motion give the same information:

(1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes No xx

(5) Result _____

(6) Date of result _____

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes No

(2) Second petition, etc. Yes No

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting the same.

Caution: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (h) Denial of right of appeal.

A. Ground one: Denial of Right of Appeal

One Issue

Supporting FACTS (state *briefly* without citing cases or law)

On June 2nd, 2002 I requested of my attorney that he file a direct appeal on my behalf. Attorney failed to file on my behalf as requested.

B. Ground two: Denial of Effective Assistance of Counsel

(Please see Affidavit in Support of Motion)

Supporting FACTS (state *briefly* without citing cases or law) Failing to file a Santobello v. New York motion on my behalf after refusing to properly pursue the matter in an Ethical & professional manner. Attorney refused to do the necessary research to determine the best approach and whether it would cause more harm then good.

C. Ground three:

Supporting FACTS (state *briefly* without citing cases or law)

D. Ground four: _____

Supporting FACTS (state *briefly* without citing cases or law) _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: _____

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes No

15. Give the name and address, if known, of each attorney who represented you in the following stages of judgment attacked herein:

(a) At preliminary hearing _____ N/A

(b) At arraignment and plea Mr. Daniel Pell 1215 East Market Street, York P.A.

17403

(c) At trial _____ N/A

(d) At sentencing Mr. Daniel Pell 1215 East Market Street, York P.A.

17403

(e) On appeal _____

N/A

(f) In any post-conviction proceeding _____

N/A

(g) On appeal from any adverse ruling in a post-conviction proceeding _____

N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes No

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes No xxx

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes No xxx

Wherefore, movant prays that the Court grant petitioner relief to which he or she may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

August 8, 2006
(Date)

Anthony Braxton
Signature of Movant

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, :
Plaintiff :
vs. : CRIMINAL NO. 1:CR-01-195 05
: :
ANTHONY BRAXTON, :
Defendant :
:

O R D E R

AND NOW, this 21st of August, 2006, upon consideration of Defendant's motion (doc. 378) under 28 U.S.C. § 2255, it is ordered that:

1. Within twenty days of the date of this order, the government shall file an answer to the motion.

2. Defendant shall thereafter have ten days from the date of receipt of the government's answer to file a reply brief.

3. Defendant's application (doc. 379) to proceed in forma pauperis is dismissed because his 2255 motion is simply a continuation of his criminal proceedings for which no filing fee nor financial assistance is required at this stage.

/s/William W. Caldwell
William W. Caldwell
United States District Judge

FILED
HARRISBURG, PA

AUG 21 2006

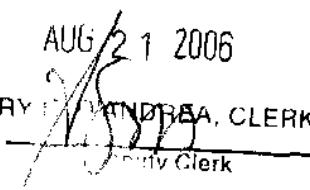
MARY ANDREA, CLERK
Per 
Court Clerk

Exhibit 2

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA) Criminal No. 1:CR-01-195
v.) (Judge Caldwell)
) (Electronically filed)
)
ANTHONY BRAXTON)

ORDER

AND NOW this 7th day of September 2006, upon consideration of the government's Motion for Extension of Time,

IT IS HEREBY ORDERED that the Motion is **GRANTED**. The response of the
United States shall be due on or before September 29, 2006.

William W. Caldwell
WILLIAM W. CALDWELL
UNITED STATES DISTRICT JUDGE

FILED
HARRISBURG, PA.

Exhibit 3

12/23/2002		(Utility event: Produces labels incl. termed attys) (rw) (Entered: 12/23/2002)
12/23/2002		(Utility event: Produces labels incl. termed attys) (rw) (Entered: 12/23/2002)
12/23/2002	275	NOTIFICATION by Circuit Court of Appellate Docket Number USCA Number: 02-4481. All correspondence should be sent to case manager Aina Laws & emailed to CA03db_PAMD Appeals. (rw) (Entered: 01/02/2003)
03/06/2003	277	STENO NOTES/TAPE OF PROCEEDINGS - filed by Monica Zamiska of 6/24/2002 sentencing. (NOTES PLACED IN BOX HN-151). (am) (Entered: 03/06/2003)
05/30/2003	282	TRANSCRIPT of Proceedings as to Anthony Braxton sentencing held on 6/24/02 before Judge Caldwell. Court Reporter: Monica Zamiska. (rw) (Entered: 06/02/2003)
07/09/2003	283	TRANSCRIPT of Guilty Plea Proceedings as to Anthony Braxton held on 11/16/01 before Judge Caldwell. Court Reporter: Gail D. McLucas, Filius & McLucas Reporting Services, Inc.. (rw) (Entered: 07/09/2003)
06/16/2005	331	Satisfaction of Judgment (Thiel, G. Michael) (Entered: 06/16/2005)
07/01/2005	332	DOCKET ANNOTATION: DOCUMENT 339 DELETED FROM RECORD AS DUPLICATIVE. (ctrh) (Entered: 07/01/2005)
08/16/2006	378	MOTION to Vacate under 28 U.S.C. 2255 (Civil Action 06-1591.) by Anthony Braxton. (pm,) Additional attachment(s) added on 8/17/2006 (kjh,). (Entered: 08/16/2006)
08/16/2006	379	Application by Anthony Braxton to proceed in forma pauperis, w/ affidavit in support annexed. (pm,)380 (Entered: 08/16/2006)
08/21/2006	380	ORDER TO SHOW CAUSE - AND NOW, this 21st day of Aug., 2006, upon consideration of deft., Anthony Braxton's mtn. 378 under 28 USC 2255, it is ordered that: 1. W/in 20 days of the dt. of this order, the Govt shall file an answer to the mtn. 2. Deft. shall thereafter have ten days from the dt. of receipt of the Govt's answer to file a reply br. 3. Deft.'s application 379 to proceed IPP is dism'd because his 2255 mtn. is simply a continuation of his criminal proceedings for which no filing fee nor financial assistance is required at this stage. Signed by Judge William W. Caldwell on 8/21/06. (am) (Entered: 08/21/2006)
08/21/2006	381	ACKNOWLEDGEMENT - of 28 USC 2255 Mtn. to Vacate & Crt.'s Order dtd. 8/21/06. RECEIVED by Pat Wiscount o/b/o AUSA Behe. (am) (Entered: 08/21/2006)
09/07/2006	382	MOTION for Extension of Time to File Response/Reply as to 380 Order to Show Cause, by USA as to Anthony Braxton. Brief in Support due by 9/21/2006 (Attachments: # 1 Proposed Order)(Behe, William) (Entered: 09/07/2006)

09/07/2006	383	ORDER - AND NOW, this 7th day of Sept., 2006, upon consideration of the Govt's mtn. for ext. of time, IT IS HEREBY ORDERED that the mtn. is GRANTED. <u>382</u> The response of the US shall be due on or before 9/29/06. Signed by Judge William W. Caldwell on 9/7/06.(am) (Entered: 09/07/2006)
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CA - THIRD CIRCUIT
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LAR 27.0
work of a possible judicial disqualification when filing the opening brief. 3rd Cir. LAR 26.1.2 now requires appellant to notify the clerk of such disqualification promptly after filing the notice of appeal. 3rd Cir. LAR 26.1.2 adds a new requirement that appellee notify the clerk of any possible disqualification if appellant fails to do so. (See also FRAP 27(a) which requires the appellee to notify the clerk of any possible disqualification within 7 days of filing the notice of appeal.) (For text of rule, see Federal Rules of Appellate Procedure.)

LAR 27.0 Motions

27.1 No Oral Argument Except When Ordered

Motions are considered and decided by the court upon the motion papers and briefs without oral argument unless ordered by the court or a judge thereof. Counsel may assume there will not be oral argument unless advised by the clerk to appear at a time and place fixed by the court.

Source: 1988 Court Rule 11.1

Cross-references: FRAP 8, 9, 18, 21, 27, 34, 40; 3rd Cir. LAR 8.1, 9.0, 18.0

Committee Comments: No substantive change from prior Court Rule 11.1 is intended.

27.2 Service

Motions shall ordinarily be served on other parties by means equally expeditious to those used to file the motion with the court. When time does not permit actual service on other parties, or the moving party has reason to believe that another party may not receive the notice in sufficient time to respond before the court acts (as in certain emergency motions), the moving party should notify such other parties by telephone or facsimile of the filing of the motion.

Source: None

Cross-references: FRAP 8, 9, 18, 25, 27, 41; 3rd Cir. LAR 8.1, 9.0, 18.0

Committee Comments: New provision. The seven-day period for filing a response provided by FRAP 27(a) runs from the time of service. If service is not effectuated promptly, the disposition of the motion may be delayed or parties opposing the motion may not have an opportunity to respond before the court rules on the motion.

27.3 Uncontested Motions

Each uncontested motion shall be certified as uncontested by counsel. In the absence of a timely response, the court may treat a motion without such certification as uncontested.

Source: None

Cross-references: FRAP 8, 9, 18, 27, 41; 3rd Cir. LAR 8.1, 9.0, 18.0

Committee Comments: New provision. The seven-day period for filing a response provided by FRAP 27(a) is unnecessary where a motion is uncontested.

CERTIFICATE OF SERVICE

Criminal # 1:Cr-01-195-5

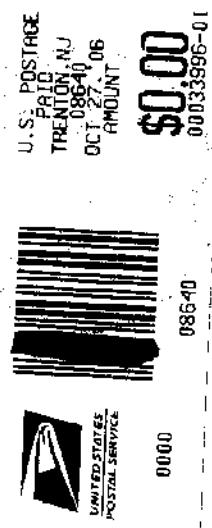
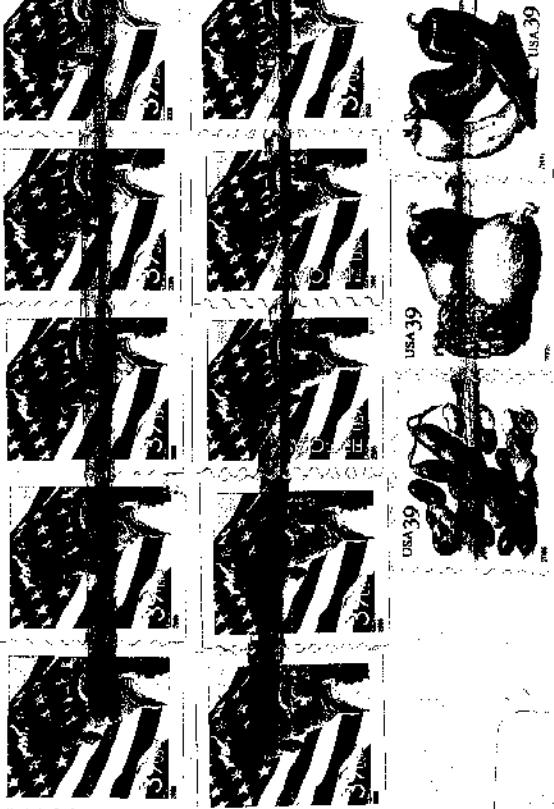
This is to certify that a copy of the foregoing motion and Exhibits were served on the United States Attorney, Middle District Of Pennsylvania, by mailing same on October 24, 2006 in a postage paid wrapped addressed as follows:

Mr. Bill Bebe
United States Attorney's Office
228 Walnut Street/United States Court House
Harrisburg, PA 17108

Dated: October 24, 2006

Anthony Braxton
Anthony Braxton
Pro Se

Anthony Braxton # 10848-067
Federal Prison Camp
P.O. Box 1000/ Camp A-UNIT
Fort Dix, New Jersey 08640



2005 3820 0001 4016 7530



RECEIVED MAIL

Office Of The Clerk
United States District Court
Middle Dist Of Pennsylvania
228 Walnut Street
P.O. Box 983
Harrisburg, PA 17108